

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

82 GLENWOOD AVE LLC,

Plaintiff,

v.

NOLAN SCHUTZE, BHL CAPITAL
LLC, DAVID KANE, EVAN LIPP, and
KANE TITLE LLC,

Defendants.

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CIV. A. NO. 3:23-cv-2231-S

**DEFENDANT EVAN LIPP’S REPLY TO RESPONSE TO AMENDED MOTION TO
DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendant Evan Lipp (“Lipp”) files this Reply to Plaintiff’s Response to Amended Motion to Dismiss [Dkt. 51] and would show the Court as follows:

I. REPLY

The claims against Lipp should be dismissed because they fall far short of the threshold pleading requirement set forth by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). According to Plaintiff’s own Amended Complaint, any and all actions taken by Lipp were done in his capacity as employee or escrow officer of Kane Title, LLC (“Kane Title”) in the course and scope of his employment. At no time did Lipp act in his individual capacity. Therefore, there is no basis to sue Lipp individually, as Plaintiff has done.

Plaintiff incorrectly states that Evan Lipp received \$75,000.00 from Plaintiff for acting as an escrow agent. This is simply not true. Evan Lipp did not receive anything for acting as an escrow agent for Kane Title. However, Kane Title did receive \$75,000.00 from Plaintiff. Evan Lipp did not receive anything.

In Plaintiff’s Second Amended Complaint [Dkt 19, pg. 3, para 20] (“Complaint”), Plaintiff

pleads the following: “Defendant Evan Lipp, an escrow agent at Defendant Kane Title LLC.” In Plaintiff’s own pleadings it states that Evan Lipp was acting as an escrow officer and employee of Kane Title. Therefore, Lipp cannot and should not be sued personally in his individual capacity.

Further, Defendants Schutze and BHL Capital LLC agree to a judgment [Dkt. 23] in the amount of \$5,000,000.00, essentially admitting to they received and were responsible for the stolen money, not Lipp. Lipp received nothing.

All emails cited and relied on by Plaintiff in Plaintiff’s Complaint are emails from Lipp’s email account with Kane Title, evan@kanetitlellc.com. Any and all actions made by Lipp were made in his capacity as an employee and escrow officer of Kane Title.

Glenwood makes multiple allegations against Nolan Schutze and his company BHL Capital LLC (“BHL”) centered on Schutze’s alleged fraudulent and deceptive material misrepresentations that “*tricked* Plaintiff into wiring \$3,000,000.00 to the Kane Defendants” to consummate a real estate transaction.¹

The four claims against Lipp are quite different. Glenwood does not assert that Lipp was involved in Schutze’s alleged fraud. Just the opposite—Glenwood alleges that Lipp was, like Glenwood, *victims* of Schutze’s fraud. The Amended Complaint alleges that Schutze “contacted [] the Kane Defendants to tell them that the [deal], which Schutze knew never existed, was dead” and “*tricked* the Kane Defendants into releasing Plaintiff’s funds to Schutze.”² Then Schutze and BHL agreed to a judgment in this lawsuit. Basically acknowledging that they were responsible for the theft of Plaintiff’s money.

In short, Glenwood has failed to plead facts sufficient to support an inference that Lipp owed any duty to Glenwood or that Lipp was acting in his individual capacity. Accordingly, the Court

¹ Second Amended Complaint [Dkt 19], ¶¶ 84, 89 (emphasis added).

² *Id.*, ¶ 94(c) and (d) (emphasis added).

should dismiss Glenwood's claims against Lipp.

II. CONCLUSION

For at least the foregoing reasons, Evan Lipp requests that the Court dismiss Glenwood's claims against Evan Lipp for breach of contract/contract, breach of fiduciary duty, negligence, promissory estoppel and statutory fraud (Counts 1-4 and 7).

DATED: December 20, 2024.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS
LIPP AND KANE TITLE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 20, 2024, all counsel of record were served with a copy of this document via the Court's electronic filing system.

By: /s/ R. Brian Shields
R. Brian Shields